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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,418	11/24/2003	Ray Skaggs	SKA839.0001	5111

34487 7590 06/15/2005

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EXAMINER
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WARTALOWICZ, PAUL A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/720,418	SKAGGS, RAY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Paul A. Wartalowicz	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 17-19 are objected to because of the following informalities: it is assumed by the examiner that '+16' in claims 17-19 is a typographical error and that this recitation of the claim should read '16'. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. The term "horizontal" in claim 10 and "horizontally" in claim 19 are relative terms which renders the claim indefinite. The term "horizontal" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Is the memory retention unit considered horizontal when the bottom surface is in contact with the ground?
3. The recitation "sufficiently flexible" in claim 11, line 5 renders the claim indefinite. All materials have a degree of flexibility. The material is "sufficiently flexible" compared to what other material?
4. The recitation "panel proximate to said top edge" in claim 20, line 2 renders the claim indefinite. It is uncertain what degree of proximity to the said top edge the gripping panels are located.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5, 7-8, 10-12, 16, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Zysman ('228).

Zysman teaches a removable internal support for a flexible container (col. 1, lines 1-2) panel of generally flat rectangular configuration having a first face, a second face, a top edge, a bottom edge, and a pair of lateral edges (fig 1, #M) made from a elastomeric (col. 1, line 18) plastic material (col. 1, lines 71-72) and at least one memory retention unit being imbedded in said panel (fig 1, #14). As to claims 7 and 8, Zysman teaches the memory retention units made from a sufficiently flexible material (metal coil springs (col. 1, lines 19-21)) having a circular cross-section (fig 3, #10a) and a panel further defined as having at least one channel being formed therein and the number of said at least one memory retention unit being equal to the number of said at least one channel with each of said at least one memory retention units being located within said at least one channel (fig 1, #14). As to claims 16 and 19, Zysman teaches two memory

retention units made from metal coil springs (col. 1, lines 19-21) that extend horizontally along said panel (fig 1, #14). Regarding to the claimed spring metal, it would have been obvious to one of ordinary skill in the art at the time of invention was made to have used spring metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use in the absence of unexpected results. See MPEP 2144.07.

4. Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Swartzentruber (US 2003/0155389).

Swartzentruber teaches a removable internal support for a flexible container (paragraph 0002, lines 1-2) comprising a panel of generally flat rectangular configuration having a first surface, a second surface, a top edge, a bottom edge, and a pair of lateral edges (fig 1, #10) constructed from rubber or plastic (paragraph 0040, line4) and at least one memory retention unit constructed from a metal spring (paragraph 0040, line 5) located in a channel formed within the panel (fig 1, #12) extending along the entire horizontal length of said panel (fig 1, #12). Regarding to the claimed spring metal, it would have been obvious to one of ordinary skill in the art at the time of invention was made to have used spring metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use in the absence of unexpected results. See MPEP 2144.07.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zysman ('228) in view of Swartzentruber (US 2003/0155389).

Zysman teaches a panel as described above. Zysman fails to teach a memory retention unit that has a rectangular cross-section.

Swartzentruber, however, teaches a memory retention unit that also could have a rectangular cross-section (fig 1, #12).

Thus, one of ordinary skill in the art would have recognized that the shape of the memory retention unit would be changed depending on the end use of the

interchangeable product since the circular and rectangular cross-section of the memory retention units have an equivalent function as shown by Swartzentruber.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention was made to have changed the shape of the memory retention unit of Zysman with rectangular cross-section since Swartzentruber teaches the equivalent function of the shape in the absence of unexpected results.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zysman in view of Rylander ('011).

Zysman teaches a panel as described above. Zysman fails to teach gripping ridges formed out of panel proximate to top edge of the panel.

However, Rylander also teaches the panel including a flexible bag holder with elongated slots (fig 1, #18) for the purpose of providing a hand-hold (col. 3, lines 31-32).

Therefore, it would have been obvious to one of ordinary skill in the art at the time applicants' invention was made to have provided Zysman with gripping ridges in order to provide a hand-hold as taught by Rylander.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Wartalowicz whose telephone number is (571) 272-5957. The examiner can normally be reached on 8:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Wartalowicz  
June 2, 2005



HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

6/10/05